

**RECEIVED
CENTRAL FAX CENTER****OCT 16 2006**Serial No.: 10/632,491
Art Unit: 1732**REMARKS**

This is a full and timely response to the outstanding final Office Action mailed August 14, 2006. Applicants are responding to the arguments newly raised in the final Office Action, and hence were unable to be addressed in an earlier action. Reconsideration and allowance of the application and pending claims 1-5, 7-20, and 22-24 are respectfully requested.

I. Comments to Response to Arguments Section on Pages 9-12

Applicants appreciate the Examiner's comments elicited from the previous response. Applicants address each comment below, identified by the corresponding section on pages 9-12 of the final Office Action. These same arguments also apply to the Applicants' arguments presented in Section II below.

9a - "as a whole" inquiry: the Office Action makes several statements as to the alleged problem Applicants' disclosure seeks to address. In particular, the Office Action states as follows (on page 10):

Applicant's remarks appear to assert that the combination is a combination of unrelated elements drawn together merely to meet the claimed steps. However, the passages from Batlle shown above clearly show comprehension of substantially the same problem addressed by Applicant and provide suggestion for the combination, namely to eliminate stresses (1:25-27).

Applicants respectfully disagree with this response on several levels. Briefly, the "as a whole" inquiry is based on 35 U.S.C. § 103(a), which recites as follows (emphasis added):

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Serial No.: 10/632,491
Art Unit: 1732

As explained in *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 U.S.P.Q.2d. 1051, 1054 (Fed. Cir. 2005), "the 'as a whole' instruction in title 35 prevents evaluation of the invention part by part." (citing *Ruiz v A.B. Chance Co.*, 357 F.3d 1275 (Fed. Cir. 2004)) As further stated in *Princeton*, "[W]ithout this important requirement, an obviousness assessment might successfully break an invention into its component parts, then find a prior art reference corresponding to each component." (*Id.*, as to *Ruiz*). The court in *Princeton* explained that "[T]his line of reasoning would import hindsight into the obviousness determination by using the invention as a roadmap to find its prior art components. (*Id.*, as to *Ruiz*)

Applicants respectfully submit that the "as a whole inquiry" argument has not been refuted in the Response to Arguments section (pages 9-12) of the Office Action nor remedied in the Detailed Action section in the balance of the Office Action, and hence Applicants' maintain their position that an "as a whole" inquiry" has not be used in the examination. For instance, the Office Action appears to equate the elimination of stresses (page 10) as the "same problem addressed by Applicant." To Applicants knowledge, Applicants have never asserted during the prosecution of the application or within the application disclosure that the elimination of stresses is the problem to be addressed. This fact is relevant since it is clear from the recitations of *Princeton* (emphasis added) that this "as a whole" assessment "requires a showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner." *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 U.S.P.Q.2d. 1051, 1054 (Fed. Cir. 2005). In fact, a brief review of Applicants' disclosure would readily reveal that the alleged problem proffered by the Office Action indeed does not resemble in any form the technological problem to be overcome as provided in Applicants' disclosure. Applicants' disclosure is concerned with the technological innovation necessary to form a masonry unit with a filler plug effect and various

Serial No.: 10/632,491
Art Unit: 1732

bevels through a compression process. Applicants respectfully note that the same problem has not been set forth in any of the Office Actions. For at least the reasons provided above, the "as a whole inquiry" has not been met as required, and thus the rejections under 35 U.S.C. § 103(a) are improper and should be withdrawn.

Additionally, Applicants note that the Office Action rebuttal to Applicants' "as a whole" contention in section 9a involves the discussion of only a single reference, *Battle*. In contrast, the statute (35 U.S.C. § 103(a)) requires an evaluation of "the differences between the subject matter sought to be patented and the prior art," and the discussion of only *Battle* (which does not disclose, teach, or suggest all of the claimed elements) used to specifically address in the Response to Arguments section Applicants' argument that an "as a whole inquiry" has not been performed highlights the very concerns that *Princeton* addressed. For instance, *Battle* fails to disclose, teach, or suggest a compression mold process. Clearly a skilled artisan addressing the problems presented in molding blocks through compression (e.g., *Whissel*, assuming *arguendo Whissel* to perform compaction) will be presented with different problems than those where compression is not used (e.g., *Battle*).

As another example, *Knipper* is concerned with a method and apparatus for making window frames (see title). Applicants are being asked to accept that one skilled in the art, armed with the problem of forming a masonry unit in a compression process with the various claimed effects/configurations, would go to window framing technology and pluck the teachings of *Knipper* without the benefit of hindsight reasoning. Applicants find such a position to be untenable.

In addition to the fact that *Battle* does not disclose a compression process, unlike some of the art of record to which it is being combined, *Battle* is deficient as a properly combinable reference in other ways. For instance, *Battle* does not disclose, teach, or suggest *masonry units*. Applicants have provided several exemplary descriptions (shown below preceded by the

Serial No.: 10/632,491

Art Unit: 1732

sections of the Applicants' disclosure in parenthesis) for masonry units, all of which are inconsistent with *Batlle's* disclosure:

(Page 1, lines 19-20 of the Applicants' disclosure) Masonry units include concrete masonry units and bricks that are stacked together and mortared to produce structures, such as building walls.

(Page 5, lines 18-29 of the Applicants' disclosure) Masonry units include concrete masonry units (CMUs) installed with mortar and other machine-manufactured products that are installed with mortar, such as fire-kilned, clay bricks, as well as bricks made with other constituents. Other embodiments include masonry units that are not installed with mortar. Further, CMUs included within the scope of the preferred embodiments of the invention include architectural concrete masonry units (ACMUs). ACMUs meet or exceed the structural specifications of CMUs in addition to including added aesthetic features, such as pigmentation, surface texture, fracturing, serrating, grinding, polishing, selection of aggregates, etc. CMUs or ACMUs that are used with mortar are to be distinguished from blocks used in segmented retaining walls (SRWs), which include landscape blocks and other blocks that are dry-stacked (e.g., installed without the use of mortar), and which also are included within the scope of the manufacturing methods of the preferred embodiments of the invention.

Further, and as mentioned above, *Batlle* is not concerned with the technological innovation necessary to form a masonry unit with a filler plug effect and various bevels through a compression process. In contrast, and according to the Office Action, *Batlle* is concerned with the elimination of stresses (page 10). Thus, a proper identification from Applicants' disclosure of the problem to be solved would clearly reveal that one or more of the proposed combinations could only be combined through hindsight reasoning.

9b - "side gussets" and *LaCroix*: The Office Action provides the following explanation with regard to side gussets (no emphasis added):

Applicant has not argued what opposing side gussets are, but only that *LaCroix's* features are not side gussets. The Examiner respectfully disagrees. Applicant's definition includes "triangular insert in a seam". *LaCroix's* Fig. 7, Item 14, clearly shows a triangular shape, and Applicant has not explained why this cannot be deemed to be the claimed element. Applicant's definition appears to be consistent with the Examiner's interpretation.

Serial No.: 10/632,491
Art Unit: 1732

Applicants respectfully disagree that item 14 of *LaCroix* meets the exemplary definition provided in the last response for gusset. The following is a reproduction of the exemplary Webster's dictionary definition for gusset provided in the last response (emphasis added) to support Applicants' assertion that *LaCroix* does not show a gusset:

- 1 : a usually diamond-shaped or triangular insert in a seam (as of a sleeve, pocketbook, or shoe upper) to provide expansion or reinforcement
- 2 : a plate or bracket for strengthening an angle in framework (as in a building or bridge)

As noted in the above definition, reference is made to a diamond shaped or triangle "insert." In contrast, the *LaCroix* reference, and in particular, item 14 of Fig. 7, shows a "division" 14 as an integral part of the mold, not an "insert" as that term is commonly understood. Applicants respectfully submit that to call the mold or any portion thereof a "gusset" would eviscerate the plain and ordinary meaning of the term "gusset." Hence, Applicants respectfully submit that a "gusset" has not been shown:

9c – Stuckey disclosure: the Office Action alleges the following in 9c:

The Examiner asserts that inspection of the reference to Stuckey will show the claimed elements relied upon. Stuckey teaches an angular surface, which is both a projection and a bevel, on the shoe (the portion of the press which compresses the mixture) in Fig. 9, item 34. Stuckey provides an angled surface around the perimeter of the formed brick (Fig. 7), and the portion formed on the sides of the mold is still interpreted to be a side gusset. Stuckey teaches both a mold box and a shoe (the part which compacts the mixture) having the claimed elements.

Applicants respectfully disagree. Applicants have reproduced below some exemplary claims (e.g., claims 7-8) with emphasis added to illustrate the features alleged in the Office Action to be addressed by *Stuckey*:

7. The method of claim 1, wherein the step of forming further includes **forming a substantially constant angle of inclination** between a front surface and opposing side surfaces, a top surface, and a bottom surface of the compressed mix corresponding to a masonry unit to be formed **by compressing the mix with the shoe against opposing side gussets** and the filler plug.

Serial No.: 10/632,491
Art Unit: 1732

8. The method of claim 7, wherein the compressing the mix with the shoe against opposing side gussets and the filler plug includes compressing the mix with an ***angular surface of the shoe*** against an ***angular surface of the opposing side gussets*** and an angular surface of the filler plug.

With regard the Office Action interpretation of a "gusset," for similar reasons presented above in association with 9b, Applicants submit that the mold box projections 30 do not equate to "inserts." Thus, Applicants respectfully submit that ***gussets*** are not shown in *Stuckey*.

With regard to the projections 34, Applicants have reproduced *Stuckey* page 3, lines 42-48 of *Stuckey* below:

The mold 27 is supported in a suitable table 31 and disposed intermediately of opposing plungers or pistons 32 which carry plates 33 which are likewise provided with oppositely directed projections 34 which form the scores on the top and bottom of the slab 35 which is formed in this apparatus.

Applicants note from the above-citation and elsewhere in *Stuckey* (e.g., page 2, lines 38-40) that the purpose of the projections is to provide a fracture point for enabling the breaking of the brick and formation of rough surfaces. The fracture point also appears to serve as a decorative recess (e.g., page 2, lines 45-46). However, a projection does not necessarily form a ***substantially constant angle of inclination*** in the compressed mix. Applicants note that the above citation (and elsewhere in the specification of *Stuckey*) is devoid of any further explanation of the geometry of the projections 34, and thus believe that *Stuckey* fails to disclose, teach, or suggest at least an ***angular surface of the shoe*** or ***forming a substantially constant angle of inclination*** as claimed.

9d – characterization of references/teaching away: The Office Action alleges the following on page 11:

The Examiner respectfully disagrees with the characterization of the references set forth in the applicant's remarks. The Examiner asserts that there is no teaching away from the elements relied upon in the rejection merely because one reference teaches dividing the blocks, and one does not. Both references provide desirable shaping features, namely bevels of different configurations.

Serial No.: 10/632,491
Art Unit: 1732

Applicants respectfully disagree that there has been a mischaracterization of the references. For instance, Applicants respectfully submit that the characterization in the last response of *LaCroix* as "concerned with addressing the perceived problems associated with splitting techniques by incorporating a mechanism to provide a textured surface without the need for splitting" is fully supported in *LaCroix*. Referring to col. 1, lines 15-22 and col. 2, lines 62-67 (emphasis added):

(col. 1, lines 15-22) It is now also common to split off a portion of the cured masonry unit so as to create a decorative face on the unit. The splitting process creates an irregular texture, and exposes, and may actually break, some of the aggregate material in the composite. The face created by the splitting process is often referred to in the industry as "split face", or "rock face".

(col. 2, lines 62-67) The invention is a self-cleaning mold assembly which will produce a random, roughened texture face that does not evidence any "shingling" on a vertical side face of a masonry unit without a splitting step, so that the manufacturing process can operate without periodic cleaning or maintenance for extended production runs.

Applicants respectfully submit that since the characterization of the *LaCroix* reference is fully supported by the specification of *LaCroix*, no mischaracterization is evidenced from the last response. Additionally, Applicants asserted in the last response that *Stuckey* "on the other hand, teaches the use of splitting techniques as an improvement over prior art techniques." Applicants respectfully submit that such a characterization finds full support in *Stuckey*. For instance, page 1, lines 35-42 from *Stuckey* provides as follows (emphasis added):

By employing the method comprising my invention, it is possible to manufacture an artificial building block or brick which has one or more faces thereof of a true broken stone appearance due to the fact that this method contemplates employing the plane of fracture of the material from which the blocks are made as the decorative face of such blocks.

Applicants respectfully submit that since the characterization of the *Stuckey* reference is fully supported by the specification of *Stuckey*, no mischaracterization is evidenced from the last response.

Serial No.: 10/632,491
Art Unit: 1732

With regard to teaching away, Applicants wish to make clear that what is being asserted is that it is not obvious to combine *Stuckey* with *LaCroix*. As is well established in the law, "[t]here is no suggestion to combine . . . if a reference teaches away from its combination with another source. . . A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . ." *Tec Air, Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999). Further, as provided in *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 U.S.P.Q. 416 (Fed. Cir. 1986), "[I]t is impermissible within the framework of 35 U.S.C. § 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art." Applicants respectfully submit that faced with such divergent methods as presented in *Stuckey* (splitting techniques) and *LaCroix* (against splitting techniques), there is no motivation to combine the two references.

9e – motivation to combine Knipper, Rasmussen, and Wittke: Consistent with the "as a whole" explanation provided above, Applicants respectfully submit that the combination of these references is improper. For instance, Applicants' claims to which *Rasmussen* is applied refer to angular surfaces, and *Rasmussen* teaches dovetailed and concave surfaces. Further, and as mentioned above, *Knipper* is concerned with U-shaped molds for window frames, not the formation of *masonry units* with the configurations claimed by Applicants. Thus, Applicants respectfully submit that the combination of these references are improper under an as a whole inquiry.

9f – statement of well-known, acknowledged by the Office Action (Page 12) as pertaining to claims 1 and 24: Applicants respectfully submit that in the context of the claim language, Applicants disagree with the allegations of well-known art levied against claims 1 and

Serial No.: 10/632,491
Art Unit: 1732

24 given the added complexity associated with such features as inserting a filler plug and forming a filler plug effect in the compressed mix whereby a masonry unit having a filler plug effect is provided.

II. Claim Rejections - 35 U.S.C. § 103(a)

A. Rejection of Claims

Claims 1-5 and 23 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* ("*Whissell*," U.S. Pat. No. 4,802,836) in view of *Battle* ("*Battle*," U.S. Pat. No. 5,358,214). Claims 7, 8, and 9-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* in view of *Battle*, and further in view of *LaCroix* ("*LaCroix*," U.S. Pat. No. 6,113,379) and *Stuckey* ("*Stuckey*," U.S. Pat. No. 1,872,522). Claims 9-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* in view of *Battle*, and further in view of *LaCroix* and *Stuckey*, and further in view of *Knipper* ("*Knipper*," U.S. Pat. No. 3,509,250), *Rasmussen* ("*Rasmussen*," U.S. Pat. No. 2,475,435), and *Wittke* ("*Wittke*," U.S. Pat. No. 2,532,049). Claim 22 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* in view of *Battle*, and further in view of *Koyama* ("*Koyama*," U.S. Pat. No. 3,662,438). Claim 23 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* in view of *Battle*, and further in view of *Knipper*, *Rasmussen*, and *Wittke*. Claim 24 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Whissell* in view of *Battle*, *LaCroix* and *Stuckey*. Applicants respectfully traverse these rejections.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a proper

Serial No.: 10/632,491
Art Unit: 1732

case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Accordingly, to make a proper case for obviousness, there must be a prior art teaching or established knowledge that would suggest to a person having ordinary skill in the pertinent art to fill the voids apparent in the applied reference. It is respectfully asserted that no such case has been made in the outstanding Office Action.

Independent Claim 1, Dependent Claims 2-5 and 23

Applicants respectfully submit that the proposed combination of references is not obvious. One indication that the proposed combination is not obvious is that the proposed combination is improper. In particular, the Office Action improperly fails to enlist an "as a whole" analysis, and has also failed to show a proper motivation to combine *Whissell* and *Battle*. The Office Action provides the following on page 2:

Whissell appears to be silent to:

b) inserting a filler plug into the side of the mold between a partition plate and a pallet and c) a filler plug effect in the compressed mix whereby a masonry unit having a filler plug effect is provided.

However, *Battle* teaches inserting a filler plug into the side of the mold between a partition plate and a pallet and a filler plug effect in the compressed mix whereby a filler plug effect is provided (Fig. 5 and 2:46-49).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of *Battle* into that of *Whissell* for the following reasons:

a) *Battle* teaches that stripping of the part from a mold causes serious problems since the adherence thereof to the mold itself and to the strips causes stresses to be formed in precastings, causing deterioration thereof, which *Battle*'s method resolves b) *Battle* suggests use in precastings, and *Whissell*'s concrete blocks are considered to be precastings.

According to established case law, "Title 35, section 103, requires assessment of the invention as a whole. This "as a whole" assessment of the invention requires a showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various

Serial No.: 10/632,491
Art Unit: 1732

elements from the prior art and combined them in the claimed manner. *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 U.S.P.Q.2d. 1051, 1054 (Fed. Cir. 2005). This showing has simply not been set forth. Assuming *arguendo* that *Battle* addresses the problems associated with stripping a mold and *Whissell* addresses precastings as explained in the Office Action, such a recitation in the Office Action is irrelevant to an inquiry into what an artisan of ordinary skill in the art would do when confronted with the same problems as the inventor, or what would have motivated an artisan to combine the elements of claim 1, as explained in Section I of this response pertaining to 9a, incorporated herein by reference. Simply put, the Office Action fails to apply an "as a whole" assessment and fails to provide a motivation to combine. As expressed in *Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal Inc.*, 231 F.3d 1339, 56 U.S.P.Q.2d 1641, 1644 (Fed. Cir. 2000), "[V]irtually all [inventions] are combinations of old elements.' Therefore, an Examiner [or accused infringer] may often find every element of a claimed invention in prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner [or accused infringer] to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat patentability of the claimed invention. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness." Thus, Applicants respectfully request that the rejection to claims 1-5 and 23 be withdrawn.

Claims 7, 8 and 9-20

Applicants respectfully submit that the proposed combination of *Whissell*, *Battle*, *LaCroix*, and *Stuckey*, assuming *arguendo* a proper combination, fails to disclose, teach, or suggest "opposing side gussets" as provided in claim 7, as explained in Section I pertaining to 9b, and herein incorporated by reference. Further, the assertion that gussets are known based on a figure

Serial No.: 10/632,491
Art Unit: 1732

that does not show a gusset would be improper, and thus Applicants respectfully request that such an assertion of well-known be withdrawn.

Applicants respectfully submit that the addition of *Stuckey* does not remedy these deficiencies, also as explained above in Section I in association with 9c, herein incorporated by reference. For similar reasons presented above, Applicants respectfully submit that a "gusset" as that term is understood by those having ordinary skill in the art is not shown in *Stuckey*. Further, Applicants respectfully submit that a groove, as described in *Stuckey*, is not the same as a bevel, and that such a groove as described in *Stuckey* does not have a "***substantially constant angle of inclination.***"

With regard to claim 8, Applicants respectfully submit that the projections 34 are not described in *Stuckey*, as explained in Section I pertaining to 9c, and thus it cannot be said what form or geometry the projections 34 embody. Accordingly, Applicants respectfully request that the rejection to claim 8 be withdrawn.

Additionally, for similar reasons presented above in association with independent claim 1 and claims 2-5 and 23, Applicants respectfully submit that the proposed combination used to reject claims 7, 8, and 9-20 is not obvious, as explained in Section I pertaining to 9a, 9d, and 9e, incorporated herein by reference. For instance, the proposed combination is improper for at least the failure to enlist an "as a whole" analysis or show a proper motivation to combine at least *Whissell* and *Battle*, among other references described in 9d and 9e of Section I.

Claims 9-20

Applicants respectfully submit that the proposed combination of *Whissell*, *Battle*, *LaCroix*, *Stuckey*, *Knipper*, *Rasmussen*, and *Wittke* is not obvious. For similar reasons presented above, Applicants respectfully submit that at least since the proposed combination of *Whissell* and *Battle* is improper as explained in association with 9a of Section I, incorporated herein by reference, the

Serial No.: 10/632,491
Art Unit: 1732

rejection of claims 9-20 using the addition of *Knipper*, *Rasmussen*, and *Wittke* to the proposed combination is improper as well.

Further, Applicants respectfully submit that a motivation to combine has not been properly established in combining *Knipper*, *Rasmussen*, and *Wittke*. *Wittke* is directed to a mold for making hollow concrete blocks. As addressed in the prior response, *Knipper* has nothing to do with methods for forming masonry units, but in quite considerable contrast, is directed to a method and apparatus for making window frames. *Rasmussen* deals with concrete block molds that address enabling undercut locking grooves and facilitating removal of the block (see column 1). According to established case law, "Title 35, section 103, requires assessment of the invention as a whole. This "as a whole" assessment of the invention requires a showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner. *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 U.S.P.Q.2d. 1051, 1054 (Fed. Cir. 2005). Applicants respectfully submit that this showing has simply not been set forth, as addressed in Section I, pertaining to 9e and incorporated herein by reference.

Claim 22

Applicants respectfully submit that the proposed combination of *Whissell*, *Battle*, and *Koyama* is not obvious. For similar reasons presented above, Applicants respectfully submit that at least since the proposed combination of *Whissell* and *Battle* is improper, the rejection of claim 22 using the addition of *Koyama* to the proposed combination is improper at least by virtue of inheriting the improper combination of *Whissell* and *Battle*. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Serial No.: 10/632,491
Art Unit: 1732

Claim 23

Applicants respectfully submit that the proposed combination of *Whissell*, *Battle*, *Knipper*, *Rasmussen*, and *Wittke* is not obvious. For similar reasons presented above, Applicants respectfully submit that at least since the proposed combination of *Whissell* and *Battle* is improper, the rejection of claim 23 using the addition of *Knipper*, *Rasmussen*, and *Wittke* to the proposed combination is improper as well. Also, as explained above, Applicants respectfully submit that the proposed combination of *Knipper*, *Rasmussen*, and *Wittke* is also improper, at least for the reasons stated in Section I, pertaining to 9e and incorporated herein by reference. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim 24

Applicants respectfully submit that the proposed combination of *Whissell*, *Battle*, *LaCroix*, *Stuckey* and *Koyama* is not obvious. For similar reasons presented above in the discussion for claim 1 in Section II and the discussion in Section I pertaining to 9a (each incorporated herein by reference), Applicants respectfully submit that at least since the proposed combination of *Whissell*, *Battle*, *LaCroix*, and *Stuckey* is improper, the rejection of claim 24 using the addition of *Koyama* to the proposed combination is improper as well. Accordingly, Applicants respectfully request that the rejection be withdrawn.

OCT 16 2006Serial No.: 10/632,491
Art Unit: 1732**CONCLUSION**

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



David Rodack
Registration No. 47,034

THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500